Office-Supreme Court, U.S.
FILED
MAY 1 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1856

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

FRANKLIN P. MENGRONE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RICHARD A. GREENBERG
CHASE & GREENBERG
515 Madison Avenue
Suite 1901
New York, New York 10022
(212) 688-0156
Attorney for Petitioner

QUESTION PRESENTED

Does Oregon v. Mathiason obviate the need for Miranda type warnings where, shortly before his formal arrest and while isolated in a federal officer's moving vehicle in which he had voluntarily agreed to ride, a suspect is interrogated in a manner designed to elicit incriminating answers already known to the officer?

CONTENTS

Page

TABLE OF CASES ii

QUESTION PRESENTED..... i

OPINIONS BELOW..... 2

JURISDICTION..... 2

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE WRIT..... 8

CONCLUSION..... 12

TABLE OF CASES

Mathis v. United States, 391 U.S.1 (1968). 12

Miranda v. Arizona, 384 U.S. 436 (1966)... 8, 9

Oregon v. Mathiason, 429 U.S. 492 (1977) 7, 8, 9, 11, 12

Orozco v. Texas, 394 U.S. 324 (1969)..... 12

United States v. Curtis, 568 F.2d 643 (9th Cir. 1978)..... 11

United States v. Hall, 421 F.2d 540 (2d Cir. 1969).....8, 10

No. 80-

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

FRANKLIN P. MENGRONE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT.

Petitioner, Franklin P. Mengrone, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit which affirmed a judgment of the United States District Court for the Eastern District of New York convicting him of conspiracy to

receive and possess goods stolen from an interstate shipment (18 U.S.C.§§659, 371), and sentencing him to a two and one half year term of imprisonment.

OPINION BELOW

The transcript of the unreported oral opinion of the Court of Appeals, rendered in open court on March 2, 1981, is annexed as Exhibit B. A copy of the District Court's written opinion denying petitioner's motion to suppress is annexed as Exhibit C.

JURISDICTION

The judgment of the Court of Appeals was entered on March 2, 1981. A copy of the judgment is annexed as Exhibit A.

Execution of the judgment of conviction was stayed by order of the United States District Court for the Eastern District of New York rendered April 6, 1981, until either June 23, 1981 or ten days after a denial by the Court of the instant petition, whichever is earlier. Petitioner is at present free on a personal recognizance bond, as he has been throughout the proceedings in the courts below.

The Court's jurisdiction is invoked pursuant to 28 U.S.C.§1254(1).

STATEMENT OF THE CASE

At a pre-trial hearing held on July 28, 1980, pursuant to petitioner's motion to suppress oral statements, the following facts were revealed.

On March 24, 1978, Special Agent Colgan of the FBI, together with eight other agents, was conducting a surveillance of a warehouse located on Dahill Road in Brooklyn, New York, as part of an investigation into the theft from interstate commerce of a shipment of "Dual" phonograph turntables. Based on information supplied by a reliable informant that turntables with serial numbers matching those of the stolen shipment were present in the warehouse, and the observation of another agent to the same effect, the agents had secured a search warrant for the premises (T.27-31).*

On the afternoon of that day prior to the execution of the warrant, petitioner was observed leaving the warehouse and driving off in a vehicle. Colgan and other agents decided to follow him because he "was well known to [Colgan] and other agents for a history of involvement in theft from interstate goods" (T.58). One of the agents had been involved in petitioner's arrest three

*"T.__" references are to pages of the hearing transcript.

years earlier for a similar offense (T. 59-60, 108-110). Following in his own car, Colgan observed petitioner make one stop in Brooklyn to pick up a person identified as John Turlone, and complete his trip by double-parking his car in front of the "Quick as a Wink" car service, also in Brooklyn. During the trip, Colgan transmitted a radio message to the agents who had remained behind at the warehouse, instructing them to commence the search (T. 33-35, 53-54).

Colgan and two other agents followed petitioner and Turlone into the car service, and proceeded through an open door into a back room, which had the appearance of a "club-type area," where Colgan saw petitioner in the company of approximately thirty other people (T. 34-35, 65). After identifying himself to petitioner as an agent, but without giving petitioner any pre-interrogation warnings, Colgan, who had left his gun in his car and had not told petitioner he was under arrest or in custody, asked petitioner "his whereabouts and activities for that day" (T. 35-38). Petitioner responded that he and Turlone had just come from New Jersey and, in response to another specific question by Colgan, denied making any stops in Brooklyn before arriving at the car service (T. 37-38).

Since Colgan "did not want to get into an adversary situation in a location [he] did not have complete control over" (T. 65), he decided not to pursue further questioning of petitioner at the car service. Instead, he asked petitioner to "join me at another location for a further interview" (T. 38), to which petitioner assented. While Colgan testified that he told petitioner that he was not under arrest and that "his accompanying me to another location was strictly voluntary" (T. 43), Colgan also told petitioner that "I wanted him to join me in my vehicle" and that petitioner "should make arrangements for his [own] vehicle which was illegally parked" (T. 38-39). After a brief private conversation between petitioner and a friend of his who was present at the car service, petitioner informed Colgan that he had made arrangements for his automobile (T. 39).*

Upon driving away from the car service accompanied only by petitioner, Colgan turned off his two-way radio to prevent petitioner from hearing any transmissions concerning the results of the search at the warehouse

*The friend, one Herman Banerman, testified for petitioner at the hearing to the effect that when petitioner asked Colgan whether he could move his double-parked car, the agent responded, "[A]re you kidding, [g]ive somebody the keys" (T. 96).

which had been conducted in Colgan's absence (T. 75). Without giving petitioner any pre-interrogation warnings or any indication that he was a target of an investigation (T. 41, 43, 47), Colgan "generated a conversation" with petitioner as they drove back to the Dahill Road warehouse (T. 40). Colgan asked if petitioner had been in Brooklyn that day, to which petitioner responded that he had not (T. 43); Colgan informed petitioner for the first time that their destination was the warehouse on Dahill Road, and asked if petitioner had been there that day, to which petitioner responded that he had never been in that vicinity (T. 44); Colgan asked if petitioner knew of a stolen load of Dual turntables, to which petitioner responded that "he's not in the business of selling stolen goods" (T. 44); finally, upon arriving at the warehouse, Colgan pointed it out to petitioner and asked if he was "aware of this location," and petitioner replied that he had not been there before (T. 44). Colgan admitted that, at least at to the questions concerning the Dahill Road warehouse, he already knew the answers (T. 61-62).

After petitioner agreed to wait alone in Colgan's car, the agent entered the warehouse to find out the results of the search,

learning inside that the stolen turntables had been found and that the proprietor had been given the turntables by someone named "Frank." Returning to his car thirty minutes later where petitioner was still waiting, Colgan brought petitioner inside for a brief confrontation with the proprietor, who identified petitioner as the person who had sold him the turntables. Petitioner was thereupon arrested, given Miranda warnings for the first time, but made no further statements.

The district court, relying primarily upon Oregon v. Mathiason, 429 U.S. 492 (1977), refused to suppress petitioner's statements on the ground that they were not the product of "custodial" interrogation and therefore no Miranda warnings were required (see Appendix C).* Petitioner thereupon entered a guilty plea to a one-count information, with the government consenting to the preservation of his right to appeal the denial of the suppression motion (T. 115).

*The District Court also denied the motion on the alternative ground that the motion had not been timely made. The Court of Appeals, however, ignored completely the "timeliness" issue and decided the appeal solely on the merits of the substantial legal issue. Accordingly, there is no jurisdictional impediment to the Court's review of the question presented herein.

In upholding the denial of the motion to suppress, the Court of Appeals, relying on Mathiason and United States v. Hall, 421 F.2d 540 (2d Cir. 1969), found that petitioner was not sufficiently in "custody" or the circumstances sufficiently coercive to require Miranda warnings.

REASONS FOR GRANTING THE WRIT

The question raised by this petition concerns the circumstances in which a suspect is deemed to be sufficiently in "custody" for purposes of receiving warnings pursuant to Miranda v. Arizona, 384 U.S.436 (1966).

On the basis of Oregon v. Mathiason, 429 U.S.492 (1977), both courts below sanctioned the failure to warn petitioner of his constitutional rights notwithstanding the fact that he was interrogated shortly before his formal and inevitable arrest, and while isolated in a moving vehicle driven by a federal agent. Even assuming that petitioner had originally agreed to accompany the agent voluntarily, his likely inability to leave the vehicle easily thereafter, had he wanted to, coupled with his status as a target who was questioned concerning matters to which the agent already knew the answers, compel the conclusion that, if petitioner was not actually in custody at the time, he was close enough to it so that, at least

while in the vehicle, he was "deprived of his freedom of action in [a] significant way." Miranda v. Arizona, supra, 384 U.S. at 444. Petitioner was therefore entitled to some form of warning concerning his rights before his interrogation in the vehicle.

Admittedly, law enforcement officers are not constitutionally required to give such warnings to every person they question, even when the person is a suspect. Oregon v. Mathiason, supra, 429 U.S. at 495.* Yet, it is useful to compare the circumstances in which law enforcement officers have been relieved of the duty of giving warnings, in determining the propriety of that omission here.

In Mathiason, for example, the defendant was offered the choice by telephone of meeting the officer anywhere the defendant chose; having "no preference," the defendant agreed to meet at the police station and came there entirely on his own. More importantly, the fact that the defendant was permitted to leave the police station after confessing his guilt is a compelling indication that his freedom of movement or action was truly not significantly impeded.

*Significantly, a seemingly important factor in the Court's decision in Miranda was the practice of the FBI to give Miranda-type warnings to any suspect interviewed by an agent even if the interview was not custodial. 384 U.S. at 483 - 487. If such remains the practice of the FBI, that practice was violated in this case.

In contrast, because the agent here wanted to avoid "an adversary situation" at the car service where he did not have "complete control" of the situation, he maneuvered petitioner to a location where he clearly did have such control--his automobile. Moreover, the agent further assured petitioner's isolation by turning off the two-way radio to prevent petitioner from hearing any transmission concerning the results of the search taking place at the warehouse. That petitioner was left alone in the agent's car outside the warehouse for thirty minutes while the agent went inside does not diminish the deprivation of his freedom of movement. On the contrary, the fact that he sat docilely awaiting his inevitable arrest indicates that he did not feel free to leave.

Similarly, in United States v. Hall, 421 F.2d 540 (2d Cir. 1969), a case relied upon by the Court of Appeals in finding petitioner's circumstances insufficiently custodial or coercive, the agents not only forthrightly informed the defendant of the purpose of their interview, but, upon learning that the defendant had given a false exculpatory answer, immediately gave him the appropriate warnings at the next available opportunity.

Here, however, the agent's conduct was more deceptive and disingenuous, and nothing approaching the isolation of petitioner in the

agent's moving car, during which he was plied with questions the incriminating answers to which the agent already knew, existed in Hall.

Finally, in United States v. Curtis, 568 F.2d 643, 646 (9th Cir. 1978), a case relied upon by the District Court here, the officers, as in Hall, fully advised the defendant of his rights immediately upon learning the first damaging fact from the defendant concerning an argument with the victim.

Here, however, the agent was not pursuing "a routine investigation to acquire what relevant information [petitioner] might have." Ibid. Instead, the agent asked questions to which he already knew, or strongly suspected, the answers. Moreover, upon receiving a false exculpatory answer to his first question of petitioner at the car service, the agent here, unlike the officers in Curtis, did not give petitioner any warnings, but continued a similar line of questioning in his car, secure in the knowledge that petitioner would incriminate himself regardless of his answer.

In sum, Mathiason is inadequate support under the circumstances for the failure to give some form of warning to petitioner.* On the

*The appropriate warnings need not be as extensive as those required by Miranda where, as here, a suspect is not in formal custody. See, Oregon v. Mathiason, supra, 429 U.S. at 498, fn. 3 (Marshall, J., dissenting).

contrary, it is respectfully submitted that, despite cases like Mathis v. United States, 391 U.S.1 (1968), Orozco v. Texas, 394 U.S. 324 (1969), and Oregon v. Mathiason, supra, the Court has not yet provided sufficiently clear guidance as to when Miranda-type warnings are unnecessary in situations where a suspect is not in "formal" custody.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

RICHARD ALFRED GREENBERG
CHASE & GREENBERG
515 Madison Avenue
New York, New York 10022
Telephone: (212) 688-0156

Attorney for Petitioner

New York, New York
April 30, 1981

APPENDIX A

Judgment of the United States Court of Appeals for the Second Circuit (March 2, 1981).

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the second day of March one thousand nine hundred and eighty-one.

Present:

HONORABLE HENRY J. FRIENDLY

HONORABLE WILLIAM H. MULLIGAN

HONORABLE WILLIAM H. TIMBERS,

Circuit Judges,

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. FRANKLIN P. MENGRONE, Defendant-Appellant.	:	80-1428

Appeal from the United States District Court for the Eastern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed in accordance with the court's oral opinion in open court.

A. DANIEL FUSARO,
Clerk

by: /S/ Arthur Heller,
Deputy Clerk

APPENDIX B

Oral opinion of the Court of Appeals rendered in open court on March 2, 1981.

(The following statement does not constitute a formal opinion of the court and is not to be reported. It shall not be cited or otherwase used in unrelated cases).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. FRANKLIN P. MENGRONE, Defendant-Appellee.	80-1428

Before:

HON. WILLIAM H. MULLIGAN, Presiding,
HON. HENRY J. FRIENDLY, Senior Judge,
HON. WILLIAM H. TIMBERS, Circuit Judge

New York, March 2, 1981.

Statement made by the court at disposition of appeal in open court.

JUDGE MULLIGAN

We have read the briefs and we've heard the argument and we believe that Judge Bartels who had the opportunity of conducting the hearing and determining the facts in the first instance properly ruled in this case. The rule is set forth in Oregon v. Mathiason, and it requires that Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him in custody. It was that sort of coercive environment to which Miranda by its terms was made applicable and to which it is limited. Now as to whether or not a person is in custody, Judge Friendly in United States v. Hall, 421 F.2d 540, 545 announced: "we do think it suggests that in the absence of actual arrest someting must be said or done by the authorities either in their manner of approach or in the tone or extent of their questioning, which indicates that they would not have heeded a request to depart or to allow the suspect to do so." Now within that framework, the factual situation clearly is far less than the custodial interrogation required before Miranda becomes applicable. Here Mengrone was approached by a singe FBI agent who identified himself, who was not wielding a gun. This took place in a back room or game room of a car service with many of Mengrone's friends present.

He was told that he was not under arrest and that the questioning and further interviewing were entirely voluntary. Bannerman, an associate of Mengrone in past misdeeds, was obviously not a credible witness so his testimony that the agent would not allow Mengrone to park his car is not persuasive. Finally Mengrone elected to accompany agent Colgan in the front seat of the agent's car for further interviewing. He waited alone in the car for a half hour and then entered the warehouse with Colgan where he was ultimately arrested and given his rights. There is nothing in these facts to suggest a coercive atmosphere rendering Mengrone deprived of his freedom to leave within the meaning of Miranda. His arrest came after good police work and was not the result of complusion or trickery. Clearly the atmosphere was one of questioning and cooperation and not of compulsion. For these reasons the judgment of conviction is affirmed in all respects.

APPENDIX C

Memorandum-Decision and Order of the United States District Court for the Eastern District of New York (August 1, 1980).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
-against-	
FRANKLIN P. MENGRONE,	80-CR-34(S)
Defendant.	

BARTELS, District Judge

MEMORANDUM-DECISION and ORDER

Defendant Franklin P. Mengrone, charged with violating Sections 659 and 2 of Title 18 of the United States Code, seeks dismissal of his indictment on the ground of undue pre-indictment delay. In the alternative, he moves to suppress all statements made by him to FBI Special Agent ("SA") Patrick Colgan on the day of his arrest, claiming that he was entitled to but did not receive the warnings required by Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966). The facts underlying Mengrone's motion to dismiss are as follows:

Mengrone and one Emanuel Toporowitz were arrested on March 24, 1978 and charged with possession of goods stolen from interstate commerce, in violation of Section 659 of Title 18 of the United States Code. After arraignment, Mengrone was released on a personal recognizance bond. The complaint against him was subsequently dismissed by the Magistrate on or about April 28, 1978, due to the government's failure to proceed in the matter. The present indictment, charging Mengrone with the same offenses as the original complaint, was filed on January 24, 1980, after an interval of almost 21 months. Defendant claims that the delay has prejudiced his ability to secure witnesses accounting for his whereabouts in the days preceding his arrest.

Generally speaking, the accused is considered to be adequately protected from stale charges by the applicable statute of limitations. United States v. Marion, 404 U.S. 307, 326, 92 S.Ct. 455, 466 (1971); United States v. Handel, 464 F.2d 679, 680-81 (2d Cir. 1972). Authority exists, however, under the Fifth Amendment Due Process Clause for the dismissal of criminal charges for undue pre-indictment delay. United States v. Lovasco, 431 U.S. 783, 97 S.Ct. 2044 (1977); United States v. Lai Ming Tanu, 589 F.2d 82 (2d Cir. 1978). But dismissal of the indictment for this

reason is not appropriate absent a showing of substantial prejudice caused by an intentional government attempt to obtain tactical advantage over the accused. United States v. Marion, supra, at 324; United States v. Lovasco, supra, at 795.

In this case, most of the delay was apparently caused by the government's desire for the cooperation of one Toporowitz in prosecuting Mengrone, which could not be obtained until criminal proceedings against him were completed in March 1979. Defendant does not allege that the interval between March 1979 and his indictment in January 1980 was the result of a deliberate government design to hamper his defense. It is impossible at this stage of the proceeding to ascertain whether, in fact, Mengrone has been substantially prejudiced by the delay. Accordingly, the motion to dismiss the indictment is denied with leave to renew at the end of trial upon a showing of prejudice.

II

Mengrone's suppression motion must be denied for two reasons. First, it is untimely. In a Scheduling Order dated February 22, 1980 Judge Neaher directed that all pre-trial motions be served and filed no later than March 31, and later extended the deadline to April 15.

The present motion was filed by defense counsel on July 25, the last day before trial. Defendant's unjustified failure timely to seek suppression of his statements to Colgan constitutes a waiver of his right thereto. United States v. Rollins, 522 F.2d 160, 165 (2d Cir. 1975), cert. denied, 424 U.S. 918, 96 S.Ct. 1122 (1976); United States v. Sisca, 503 F.2d 1349 (2d Cir.), cert. denied, 419 U.S. 1008, 95 S.Ct. 328 (1974); compare United States v. Valdes, 280 F. Supp. 172, 173-74 (S.D.N.Y. 1968), aff'd, 417 F.2d 335 (2nd Cir. 1969), cert. denied, 399 U.S. 912, 90 S.Ct. 2206 (1970).

The second, and more important reason for denying Mengrone's motion is his failure to show that his statements were made under circumstances requiring that he be advised of his Miranda rights.

On Friday, March 24, 1978, a number of agents from the New York office of the FBI were conducting a surveillance of the premises at 455 Dahill Road in Brooklyn, where they had reason to believe a quantity of "Dual" turntables stolen from interstate commerce was stored. The building was owned by Emanuel Toporowitz, who conducted a business there. Franklin Mengrone was observed leaving that location and entering a black and white Chevrolet Monte Carlo. He had also been observed leaving 455 Dahill Road earlier in the

week, on March 21. In addition, it was known to at least some of the FBI agents conducting the Dahill Road surveillance that Mengrone in 1975 had been arrested and charged with possession of goods stolen from interstate commerce.

All persons seen leaving 455 Dahill Road in a car on March 24 were followed by FBI agents. When Mengrone left between 2:30 and 3:00 P.M., he was followed by several agents travelling in separate cars, including SA Patrick Colgan. While following Mengrone, Colgan radioed from his car to the agents remaining at 455 Dahill Road, directing them to execute a search warrant previously obtained for the premises. However, SA Colgan did not learn that stolen turntables were discovered in the course of the search until returning to the scene with Mengrone later in the afternoon.

After leaving Dahill Road, Mengrone picked up one John Turlone at East 3rd Street and Avenue C in Brooklyn, and together they proceeded to the Quick-As-A-Wink Car Service, located at Quentin Road between 31st and 32nd Streets. Mengrone double-parked his car and entered the car service with Turlone, closely followed by the FBI agents who had been following them. Colgan entered the back room of the car service where he found Mengrone and a number of other people, including one

Herman Bannerman, a close personal friend and business associate of Mengrone's. While other FBI agents spoke with others in the room, Colgan alone approached Mengrone. Both Colgan and Mengrone identified themselves. In response to Colgan's questioning, Mengrone made several statements to the effect that he had left his store in Bloomfield, New Jersey about an hour before with Turlone, and had come directly to the car service without stopping at any other point in Brooklyn.

Mengrone was asked if he would be willing to accompany Colgan to another location for a further interview. He was advised that he was not under arrest and that his accompanying SA Colgan would be voluntary. Mengrone voluntarily agreed to Colgan's suggestion, and after arranging for Bannerman to move his double-parked car, he entered Colgan's FBI vehicle and they left. Although Mengrone did not yet know it, they were heading back to 455 Dahill Road. During the car trip, Colgan asked Mengrone if he knew anything about stolen goods being distributed in Brooklyn, to which Mengrone replied that he was not in the business of selling stolen goods. Colgan then told Mengrone that their destination was Dahill Road and Avenue C. Asked if he had recently been in that area, Mengrone denied it. When the two actually arrived in the vicinity of 455

Dahill Road, Mengrone stated in response to Colgan's question that he could not recall ever being at that location. Finally, Mengrone was asked if he knew anything about a stolen shipment of "Dual" turntables, and he disclaimed any such knowledge.

Colgan asked Mengrone if he would remain in the car until Colgan returned from inside 455 Dahill Road. Mengrone agreed. Colgan then entered the premises and learned that the stolen turntables had been found there. After about thirty minutes had passed Colgan returned to the car and escorted Mengrone into a business office on the second floor of the building. Also in the room were two FBI agents and Emanuel Toporowitz. After a brief interval during which no words were spoken, Mengrone was asked to leave the room. Toporowitz then told the FBI agents that Mengrone was the man, known to him only as "Frank," with whom he had had dealings with respect to the turntables. Shortly thereafter Mengrone was told that he was under arrest and read his Miranda rights. He made no further statements.

We hold all of Mengrone's statements to SA Colgan to be admissible. At the time he made them, Mengrone was neither in custody nor "otherwise deprived of his freedom by the authorities in any significant way." Miranda v. Arizona, 384 U.S. at 478, 86 S.Ct. at 1630.

Colgan had no probable cause to arrest Mengrone until after the disputed statements had been made, when he learned that stolen turntables had been found at 455 Dahill Road and that Mengrone had had dealings with Toporowitz with respect to those turntables. Cf. United States v. Carollo, 507 F.2d 50, 52 (5th Cir. 1975).

The setting of the conversation at the car service was entirely non-coercive. Only Colgan spoke directly to Mengrone, and many non-FBI agents were present, including a close personal friend of Mengrone's. Mengrone voluntarily agreed to accompany SA Colgan in the FBI vehicle. Cf. United States v. Curtis, 568 F.2d 643, 646 (9th Cir. 1978). "[P]olice officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because ... the questioned is one whom the police suspect." Oregon v. Mathiason, 429 U.S. 492, 495, 97 S.Ct. 711, 714 (1977).

SO ORDERED.

Dated: Brooklyn, New York,
August 1, 1980

/S/ JOHN R. BARTELS
United States District Judge